Supreme Court of the United States.

No. 133.

The Ship Sapphire, G. C. Truefant and I. R. Tebbets,

Claimants—Appellants,

vs.

Napoleon III, Emperor of the French.

BRIEF OF THE CLAIMANTS AND APPELLANTS.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 133.

The Ship Sapphire, G. C. Truefant and I. R. Tebbets, Claimants—Appellants,

AGAINST

Napoleon III, Emperor of the French.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

IN ADMIRALTY.

BRIEF OF CLAIMANTS AND APPELLANTS.

ABSTRACT OF THE CASE.

LIBEL.

On the 24th of December, 1867, in the District Court of California, the Emperor of the French, Napoleon III, filed a libel in the admiralty against the ship "Sapphire," in which it is averred that the transport "Euryale" was a national vessel belonging to the Imperial Government of France; that on the 22nd of December, 1867, a collision occurred in the harbor of San Francisco, between the said "Euryale" and the ship "Sapphire," by which the former was damaged to the extent of fifteen thousand dollars. That the collision was occasioned wholly by the negligence and inattention, and want of proper care and skill on the part of the ship "Sapphire," her master and crew, and not from any fault, omission, or neglect on the part of the "Euryale," her master and crew. *Record, pp.* 8–10, articles 2–3–4–5–6–9.

A stipulation for costs was filed in behalf of the libellant on the 24th of December, 1867. *Record, p.* 10.

An arrest of the ship was made by monition on the same day. *Record, p.* 13.

The claimants, G. C. Truefant and I. R. Tebbets, on the 27th of December, filed a claim as owners of the ship Sapphire. *Record, p.* 11. And on the same day entered into a stipulation, with sureties, for costs. *Record, p.* 12.

Answer. On the 20th of February, 1868, the claimants filed their answer, *Record, pp.* 14–15, in which they denied the principal allegations of the libel. They aver that the ship "Sapphire" had her full complement of men and officers on board, was fully and properly manned and equipped, that the officers and crew, before and at the time of the collision, were on deck ready to adopt and use any and all measures to prevent any danger or accident happening to said ship "Sapphire;" they aver that between four and five o'clock, on the morning of the 23rd of December, 1867, the transport "Euryale" *ran into and collided with the ship "Sapphire"* without any fault or negligence on the part of the officers, or any of them, or the crew, or any of them, of the ship "Sapphire;" that whatever damage was done to the said transport "Euryale" or said ship "Sapphire" occurred and was occasioned *solely and exclusively by reason of the fault and negligence* of the officers of said transport "Euryale"—wherefore the claimants pray the Honorable Court would be pleased to pronounce against the libel and to condemn the libellant in costs, and *otherwise law and justice to administer in the premises. Record, pp.* 14–15, *article* 9.

The District Court, on the 19th of May, 1868, filed its opinion, and ordered that a decree be entered in favor of the libellant, in accordance with said opinion, and on the 11th of August, 1868, it was decreed that the libellant recover the amount of his damages sustained by him in consequence of the collision, in his said libel described and set forth; and it is ordered that the cause be referred to a commissioner to ascertain and compute the amount of the said damages due the said libellant in the premises, and report the same to the court. *Record, pp.* 48–49–50.

The commissioner, on the 12th of December, 1868, reported that the sum of $16,474 was due to the libellant as damages sustained by him,

by reason of the collision. *Record, pp.* 50–51. On the 13th of January, 1869, the report was confirmed. *Record, p.* 55.

A final decree was entered by the District Court on the 13th of January, 1869, and a summary judgment against the claimants and their sureties, for the sum of fifteen thousand dollars ($15,000) the amount claimed in the libel. *Record, p.* 55. On the 22nd of January the claimants appealed to the Circuit Court. *Record, p.* 56.

An appeal to the Circuit Court was filed on the 2nd of February, 1869, in which they aver that the decree of the District Court was erroneous, and ask that the same may be reversed; and they pray that the appellee may be condemned to pay to the appellants and claimants *their costs and damages in the premises. Record, pp.* 58–59.

The Circuit Court on the 24th of June, 1869, decreed that the libellant receive of the claimants, the sum of fifteen thousand dollars, and the costs taxed in the court below, at $115.50 and also the costs of this court; it was also decreed that a summary judgment be entered against the claimants and their sureties, for the said amounts. *Record, pp.* 59, 60.

An appeal from the Circuit Court to the Supreme Court of the United States was taken and allowed on 6th July, 1869. *Record, pp.* 60, 61.

The Supreme Court of the United States reversed the decision of the Circuit Court, upon the ground that the collision was the result of fault on the part of both vessels, and that "both parties being in fault the *damages ought to be equally divided between them.*" The court thereupon remanded the cause to the Circuit Court, with directions to enter a decree in conformity with the opinion of the Supreme Court, and that the claimants recover their costs, taxed at $137.43. *Record, pp.* 1–2. *The "Sapphire,"* 11 *Wallace*, 164.

The Circuit Court, on the 27th of November, 1871, the Honorable Lorenzo Sawyer, Circuit Judge, the mandate of the Supreme Court having been, on the 29th of July, 1871, filed therein, reversed its prior decision and also the decree of the District Court which had been previously entered; and thereupon decreed that the libellant recover

against the ship "Sapphire" and the said claimants the sum of seven thousand and five hundred dollars, the same being one-half of the damages decreed by this court in favor of said libellant and against said claimants. It was further decreed that the libellant recover against the ship the costs in the District Court taxed at $115.50, together with his costs in the Circuit Court taxed at $299.70, amounting in all to $415.20, less the sum of $137.43, costs of the claimants expended in the prosecution of their appeal to the Supreme Court of the United States; it was further decreed that a summary judgment be and the same hereby is entered against G. C. Truefant and I. R. Tebbets, the principals, and Henry B. Williams and Henry P. Blanchard, the sureties on the bond filed for the release of the ship for the sum of seven thousand and five hundred dollars, and for the sum of two hundred and seventy-seven dollars and seventy-seven cents. *Record, pp.* 2–3.

Appeal to this court. On the 24th of December, 1871, G. C. Truefant and I. R. Tebbets, the claimants and owners of the ship, entered an appeal from the last above mentioned decision of the Circuit Court to the Supreme Court of the United States, which was allowed on the 26th of December, by the Honorable Lorenzo Sawyer, Circuit Judge, *record, pp.* 5–6, which appeal has been entered and transcript of the record filed in this court.

ERRORS.

The decree of the Circuit Court which was entered on the 27th of November, 1871, is erroneous.

First, in this, that it decrees in favor of the libellant for the sum of seven thousand five hundred dollars, being one-half of fifteen thousand dollars, the sum previously awarded to the libellant, by the Circuit Court, as and for damage sustained by the libellant as owner of the "Euryale," without taking into consideration the damage sustained by the "Sapphire."

Second. The Circuit Court did not ascertain the amount of damage which had been sustained by the "Sapphire," without which ascertainment the court could not divide the damages sustained by the two vessels equally between them.

Third. The libellant having failed, in the judgment of this court, to establish the case set forth in the libel, was not entitled to any decree in his favor until after the damages sustained by each of the vessels should be ascertained, and thereby show whether the libellant had sustained a damage exceeding, or less in amount than, the damages sustained by the claimants.

Fourth. The decree of the Circuit Court is erroneous in allowing the libellant his costs in the District and in the Circuit Courts, to which he was not entitled.

Fifth. The Circuit Court should have entered a decree in favor of the claimants for $137.43, the costs allowed them by the Supreme Court. Deducting this amount from the costs allowed the libellant was erroneous.

Sixth. The decree of the Circuit Court is not in conformity with the decree of the Supreme Court as is shown by its mandate, and the opinion to which it refers. The Supreme Court did not direct the Circuit Court to enter a decree in favor of the libellant for the sum of seven thousand and five hundred dollars, or for any other sum. The mandate and the opinion of the Supreme Court has settled that the libellant is not entitled to recover upon the case stated in the libel, which is based upon the supposed exclusive fault and wrong of the claimants; it has decided that both parties were in fault and remanded the suit to the Circuit Court with directions to proceed and dispose of the same upon the principles applicable to such case.

POSITIONS.

I. In a cause of collision between two vessels resulting from the fault of both parties, the damages sustained by each of the vessels are to be ascertained and the entire aggregate sum divided between them. This is the well settled law of the admiralty which has been recognized and established by this court.

The Sapphire, 11 Wallace 164–171. Both parties being in fault the damages ought to be equally divided between them. Decree of the Circuit Court reversed and the cause remitted with directions to enter a decree in conformity with this opinion.

The Ariadne, 13 Wallace 475–479. Collision between the steamer Ariadne and the brig William Edwards. The District Court decided that the brig was solely in fault, which decision was affirmed by the Circuit Court. On appeal the Supreme Court decided (p. 479) "both vessels being in fault the damages must be divided." Decree reversed and the cause remanded to the Circuit Court with directions to enter a decree in conformity to this opinion.

Cushing and others v. *owners of Ship John Fraser and the steamer General Clinch*, 21 How. 184–187. The libel is filed in rem by the owners of the James Gray, against the ship above mentioned, alleging that she was free from fault and that the damage was occasioned altogether by their negligence and mismanagement, and claiming the right to charge them with the whole amount of the loss sustained. The owners of the John Fraser and the owners of the General Clinch answer separately, each of them charging the misconduct of the James Gray as the cause of the disaster; but each of them also imputing some degree of blame to each other. *Page* 194–5. The result of this opinion is that the loss must be equally divided between the James Gray and the General Clinch. The decree of the Circuit Court is therefore reversed, and the case remanded, with directions to adjust the loss upon the principles stated in this opinion.

Chamberlain v. *Ward*, 21 How. 548. Being a case of mutual fault, the decree of the Circuit Court apportioning the damages is affirmed.

The Gray Eagle, 9 Wallace 505. A loss equally divided between two vessels on facts set forth in the case showing fault in both.

The Schooner Catherine, 17 How. 170. Both vessels being in fault the loss must be divided. *Page* 177. It becomes necessary to settle the rule of damages in a case where both vessels are in fault. The question, we believe, has never until now come distinctly before this court for decision. In such case it seems to be the well settled rule in the English admiralty to divide the loss. *Page* 178, *order*. The decree in the Circuit Court is reversed with costs, and this cause is remanded to the said Circuit Court for further proceedings to be had

therein in conformity to the opinion of this court, and as to law and justice shall appertain.

Rogers v. *Steamer St. Charles*, 19 How. 108, 112. The court arrived at the conclusion that both vessels were in fault, and thereupon say "the case is one for the apportionment of the loss." "The decree must therefore be reversed, and the case remanded to the court below for the purpose of carrying this apportionment into effect."

The Maria Martin, 12 Wallace, 31. Damages equally divided in a case of collision in which both vessels were in fault. *Page* 43—If both vessels were in fault, then the settled rule of law is that the damages must be apportioned between the offending vessels.

The Mabey, 10 Wallace, 420. "If the pleadings or evidence are so defective that no decree can be founded upon them, and the case appear to have merits, the court will reverse the decree and remand the cause to the court below, with directions to permit amendments and further proofs.

The Seringapatam, 2 Wm. Rob, 506. The court found both vessels in fault and pronounced that the damages should be equally borne by both parties.

The same case, 3 Wm. Rob, 38.

Maude & Pollock on shipping, 312. If both parties are to blame, the loss must be apportioned between the parties, as it has been occasioned by the fault of both. 313. When both vessels are in fault the sums representing the damage sustained by each are added together and the amount is equally divided between the two. This rule is inflexible and holds good even although one of the vessels may have been more in fault than the other.

Vaux v. *Sheffer*, 8 Moore, P. C. 75. In collision the rule of the admiralty court, where both parties are mutually blamable in not taking necessary measures to prevent accidents, is to apportion equally the damages between the respective owners of the vessels. The judicial committee being of opinion that both vessels were in fault

decreed the damage to be equally divided between them, remitted the cause to the court below to ascertain the amount of damage, and to divide the same into moieties between the owners of the respective vessels.

II. In the case at bar, the original decree of the Circuit Court allowing the libellant the sum of fifteen thousand dollars, the amount claimed by him as the damage sustained by the "Euryale," has been reversed by this court. In other words the case stated in the libel has been disproved and rejected. In this state of the cause the libellant must show the entire damage sustained by the two vessels, and that the damage to the "Euryale" exceeds that of the "Sapphire," or he cannot have a decree in his favor.

The London, XI, Moore, P. C. 307. The *onus probandi* lies on a party seeking to recover compensation for damage occasioned by a collision, and *that* party must establish that the loss was attributable to the neglect or default of the other party, or else he cannot recover.

Kilgour v. *Alexander*, 14 *Moore*, *P. C.* 173. In a case of collision, the plaintiff must establish his case according to his own pleadings and evidence, and not upon the failure of the defence set up by the defendant.

Malcomson v. *Clayton*, 13 *Moore P. C.* 198.

III. The claimants in their answer, *article ninth*, *Record*, *p.* 15, *top of the page*, set up and aver "that the Sapphire had her full complement of men and officers on board and was fully and properly manned and equipped, and until the occurrence of the collision alleged in said libel all the officers and crew of said ship 'Sapphire' were on deck ready to adopt and use any and all measures to prevent any danger or accident happening to said ship 'Sapphire'." That said ship "Sapphire" swung at her anchor without dragging; and that between four and five o'clock on the morning of the 23rd of December, 1867, *the transport "Euryale"*

ran into and collided with the said ship "Sapphire" without any fault or negligence on the part of the officers or any of them, or the crew or any of them, of said ship "Sapphire." That whatever damage was done to the transport "Euryale" *was occasioned solely and exclusively by reason of the fault and negligence of the officers of said transport "Euryale."* In the tenth article of their answer they ask that the Honorable Court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in cost *and otherwise law and justice* to administer in the premises.

A. It thus appears by the pleadings, that distinct issues were presented, each charging the other as solely and exclusively in the wrong; each asking the court to administer law and justice in the premises.

B. In the District Court, and also in the Circuit Court the claimants had no opportunity to show the nature, extent or amount of damage sustained by the "Sapphire" because the interlocutory decree of the District Court holding the claimants alone as in the wrong, which was carried into the final decree, and subsequently affirmed by the Circuit Court. It follows upon a reversal of the decree of the Circuit Court and a remand of the cause, the claimants had a right to show the nature, extent and amount of their damage under the pleadings as they now stand, if necessary to protect themselves they are at liberty in the court below to specify more particularly their damage or they may file an amended or supplementary answer stating the amount and character of the damages sustained by the "Sapphire" in the collision.

Williams v. *Gibbs*, 20 *How.* 535. In this case a mandate was sent to the court below, which, from the character of the case, required a settlement of accounts. A supplemental answer was allowed in the court below after the mandate had been received.

Chaires v. *United States*, 3 *How.* 611. After a mandate, the court below can only settle what remains to be done.

Sibbold v. *United States*, 12 *Pet.* 488–9.
West v. *Brashear*, 14 *Pet.* 51–54.

IV. In a case of collision, in which both parties are in fault, each party pays his own costs.

The Monarch, 1 *Wm. Rob.* 21. "In case of collision, both in fault, each pays his own costs."

In the case at bar, the original decree was reversed, and the cause after the mandate required the court below to act upon a new state of facts; so that the question of costs arises subsequent to the mandate.

V. The claimants were entitled to the costs awarded them on their appeal to the Supreme Court, because they were compelled to appeal to protect their rights; these costs stand upon grounds distinct from those applicable to the costs of the parties in the District and Circuit Courts. The Circuit Court should have entered judgment therefor, instead of deducting the amount from the costs allowed to the libellant.

VI. It is respectfully submitted that the decree of the Circuit Court should be reversed; that the cause should be remanded with directions to ascertain the nature, extent and amount of the damages sustained by the "Sapphire," and thereupon render such judgment as will carry into effect the mandate previously issued by this court. Upon the reception of the mandate, the Circuit Court should have entered a decree that both vessels were in fault.

A. It is evident that the Circuit Judge mistook the import and requirements of the mandate and opinion to which it refers.

Story v. *Livingston*, 13 *Pet.* 359. The mandate issued by the Supreme Court is to be interpreted according to the subject matter and it is in no manner to work injustice.

C. B. GOODRICH,
For the Appellants.

Supreme Court of the United States.

No. 133.

THE SHIP SAPPHIRE, G. C. TOUEFANT, and J. R. TEBBETTS, Claimants, Appellants,

vs.

NAPOLEON III., Emperor of the French.

BRIEF OF APPELLEE.

C. CUSHING,
For Appellee.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1873.

THE SHIP SAPPHIRE, G. C. TRUEFANT AND T. R. TEBBETTS, CLAIMANTS, Appellants,
vs.
NAPOLEON III, EMPEROR OF THE FRENCH.

In Admiralty.

No. 133.

APPEAL FROM CIRCUIT COURT.

BRIEF OF APPELLEE.

This appeal brings up but a single question, the construction of the opinion of this court accompanying the mandate on the previous hearing of the case.

It is submitted there is no error in the construction of this opinion by the court below.

I. This court held, that "both parties being in fault, *the damages* ought to be equally divided between them," (the two vessels.)

The only damages which had been considered in the opinion of this court were the damages which had been sustained by the "Euryale." No allusion was made to any damages sustained by the Sapphire. It is evident, then, that the "damages to be equally divided" were the damages of the Euryale.

II. The libel and answer in the transcript, when the case was before this court, only raised the question of the amount of damages sustained by the Euryale. The opinion of the court, therefore, that "the damages ought to be equally divided between them," must necessarily be con-

strued to refer to the damages proved to have been sustained by the Euryale.

III. The question of the amount of damages sustained by the Sapphire were not in evidence under the pleadings in the transcript.

The only questions raised by the pleadings were whether the Sapphire was liable for the damages sustained by the Euryale, and if so, the quantum of such damages. There was no question as to the quantum of damages sustained by the Sapphire.

It was never competent to prove the quantum of damages sustained by the Sapphire.

"All substantial grounds of defence must be distinctly propounded."

No evidence is admissible except such as relates to the express allegations on the one side or the other.

The parties are respectively bound in some form to apprise each other of their respective pretensions, and the proofs, to be available, must accord with the allegations.

2 Conkling's Admiralty, p. 245.

The decree must be *secundum allegata*, and *probata*.

2 Conkling's Admiralty, p. 248.

See further, Jenks *v.* Lewis, Ware's R., p. 51.

The opinion of this court must be interpreted by keeping these considerations in mind.

IV. In order to have gone into the proof of the amount of damages sustained by the Sapphire, it is submitted there should have been a cross action.

See case of The Nancy, referred to in note to the case of The Celt, 3 Haggard's Admiralty R., p. 328.

Also, The Maid of Aukland, cited in 1 Conkling's Admiralty, p. 378.

The opinion of this court, determining that the "damages" should be "divided," must be construed by the great

fact that no cross action was pending, and no question therefore existing as to the damages of the Sapphire.

V. This case is almost identical with the case of Hay *et al. v.* Le Neve *et al.*, 2 Shaw's Cases in House of Lords on Appeals from Scotland, p. 395, in which it was held that: One ship having run another down, and this having been occasioned equally by the fault of both, that the owners of the ship which ran the other down were liable for only the one half of her value.

The judgment of the House of Lords was in the words following:

"Therefore, that the appellants are liable to the respondents in the sum of £1,535 14s, one half of the value of the Wells and her cargo."

In the case above cited, in the House of Lords, as here, no proof had been made of the money value of the damages to the vessel running down the Wells.

No reason is seen why the opinion of this court should not be construed according to the opinion of the House of Lords in the above case.

The condition of affairs was precisely similar in the case above cited from the House of Lords and the present case, and it would seem this court intended the same judgment as was rendered by the House of Lords.

VI. In *ex parte* Dubuque and Pacific R. R., (1 Wall., 69,) this court held:

"The 24th section of the judiciary act governs the practice in cases brought up and reviewed in this court. It is bound to give such judgment as the court below ought to have given."

In this case, when formerly here, this court no doubt gave "such judgment as the court below ought to have given."

The court below, under the state of the pleadings and evidence, was bound to have given judgment dividing the damages sustained by the Euryale. Indeed it was impos-

sible then for the court below to have taken into consideration the damages sustained by the Sapphire, if there were such, as the pleadings did not authorize such to be proved, and none were proved.

The opinion of this court accompanying the mandate is to be construed as merely ordering such a judgment as the court below should have rendered under the pleadings and evidence.

VII. No error is admitted in the action of the court below in the matter of costs, but it is submitted the court below has followed the directions of the mandate.

C. CUSHING,
For the Appellee.

See also the following cases:
West vs. Brashear, 14 P. 53
Sibald vs. M.S., 12 P. 492.
The Santa Maria, 10 Wh. 432.
Killeen vs. May, 6 Cr. 264.
The Vanderbilt, 6 Wall, 225-230.